IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 221 OF 2003.

Smt. Janaki N. Morajkar,
widow of Narcinha Morajkar,
aged about 72 years,
resident of House No. 59,
Malbhat, Margao, Goa. ..... Appellant.

Versus

1. Spl. Land Acquisition Officer,
South Goa, KRCL, Ameya Guest House,
Davorlim Road, P.O. Navelim,
Salcete Goa-403707.

2. The Chief Engineer,
formerly at Konkani Railway Corporation
Ltd., 4th Floor, Souza Towers,
Church Square, Panaji, Goa,
and presently at Davorlim Road,
Navelim, Salcete, Goa. ..... Respondents.

Shri S.S. Kakodkar, Advocate for the Appellant.

Shri E. Afonso, Advocate for the Respondents.

CORAM: A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE: 9th February, 2005.

ORAL JUDGMENT: (PER LAVANDE, J.)

By this appeal the appellant takes exception to Judgment and

Award dated 15th May, 2003 passed by the IIIrd Additional District Judge, Margao in Land Acquisition Case No.321/95 rejecting the reference sought by the applicant in respect of the land acquired by Konkan Railway Corporation.

2. By Notification dated 13.3.91 issued under Section 4 of the Land Acquisition Act which was published on 16.5.91 an area of 2594 sq. metres bearing Chalta No.4/6 of P.T. Sheet No.271 belonging to the Comunidade of Aquem was acquired. The applicant is the tenant of the Comunidade if respect of the said land. The Land Acquisition Officer made his Award, awarding 6.75 per sq.m. in respect of the acquired land. An amount of Rs.6.35 per sq.m. was paid to the applicant being tenant of the land and 0.40 per sq.m. was paid to the Communidade for the said land. Being aggrieved by the Award made by the Land Acquisition Officer, the applicant herein sought reference under Section 18 of the Land Acquisition Act claiming compensation at the rate of Rs.500/- per sq.m. In the Reference Court the applicant examined two witnesses, Pundalik Morajkar as AW1 and Antule Morajkar as AW2. The applicant produced two sale deeds and one Award. Out of the said two sale deeds, one was in respect of developed plot and the other one was in respect of the agricultural land. The Award on which reliance was placed was in respect of agricultural land, situated at a walking distance of about 5 minutes,

which was acquired by Notification dated 12.9.85. In that Award, the Reference Court awarded Rs.100/- per sq.m. and in the High Court the parties settled the matter and by consent the amount was reduced to Rs.75/- per sq.m. The respondents herein did not lead any evidence. After considering the evidence and the submissions made by the parties, the Reference Court by the impugned Judgment and Award, rejected the reference holding that there was no case made out for enhancing the compensation in respect of the acquired land.

3. Mr. Kakodkar, the learned counsel appearing for the appellant, submitted that the Reference Court ought to have considered the potentiality of the land although the property was tenanted agricultural land. He further submitted that having regard to the fact that in respect of the land situated at a walking distance of 5 minutes for a similar land, the compensation of Rs.75/- was awarded by the High Court and therefore the compensation ought to have been enhanced in respect of the acquired land. The learned counsel further submitted that potentiality of the land has to be considered while determining the compensation for the acquired land and the Court has to also consider if there is any adjoining development in order to find out the exact compensation payable to the person whose land is acquired. The learned counsel further submitted that future potentiality of the land has to be also considered while fixing the compensation. It is

also submitted that in case of dissimilarity, the Court has to fix the compensation depending upon the dissimilarity of the land acquired and of the land which is the subject matter of the sale deed or the Award. In support of his submission, the learned counsel has relied upon the following judgments of the Apex Court:-

Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another (A.I.R. 1988 S.C. 1652), Adusumilli Gopalkrishna v. Spl. Deputy Collector (Land Acquisition) (A.I.R. 1980 S.C. 1870), Hasanali Walimchand (dead) by L.Rs. v. State of Maharashtra (A.I.R. 1998 S.C. 700), The Collector, Raigarh v. Dr. Harisingh Thakur and another (A.I.R. 1979 S.C. 472), State of Haryana v. Ram Singh (A.I.R. 2001 S.C. 2532) and Shahji Kuriakose & anr. v. Indian Oil Corporation Limited & Ors. (2001(4) All MR 874).

4. Mr. Kakodkar further submitted that in the Award made by the Land Acquisition Officer it is mentioned that it was submitted on behalf of Konkan Railway Corporation that the value of the land would range from Rs.30/- per sq. m. in respect of single crop of paddy field and Rs.25/- in respect of other type of land, and therefore the Appellant is entitled to compensation at least to the extent of Rs.30/- per square metre.

5. Per contra, Mr. Afonso, learned counsel appearing for the

respondents submitted that no interference is called for by this Court and no fault could be found with the reasonings given by the Reference Court while passing the impugned Judgment and Award. Mr. Afonso submitted that having regard to Section 2 of the Goa Land Use (Regulation) Act, 1991 that potential of the acquired land is totally irrelevant and the compensation has to be ascertained on the basis of the agricultural income in respect of the acquired property and the appellant having not led any evidence about the agricultural income in respect of the acquired property, there is absolutely no justification for enhancing the compensation given by the Land Acquisition Officer.

6. In view of the rival contentions, the following point arises for determination in the present appeal :-

Whether the appellant is entitled to compensation of Rs.500/- per sq. m. in respect of the acquired land ?

7. We have considered the submissions made by the learned counsel for the parties. The Goa Land Use (Regulation) Act, 1991 was extended to the State of Goa and in terms of Section 1, sub-s.(3) of the said Act, the Act shall be deemed to have come into force with effect from 2nd day of November, 1990. At this stage it would be appropriate to quote section 2 of the said Act which reads as under :-

" 2. Regulation of use of land. --- Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975) or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agriculture.

Explanation: --- The expression 'agriculture', 'land' and 'tenant' shall have the same meaning assigned to them under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964). "

8. In the present case the applicant is admittedly an agricultural tenant. It is also an admitted fact that the acquired land is tenanted and agricultural. That being the position, Section 2 of the Act will squarely apply in the present case and in view of Section 2, there is a clear bar for the applicant to use the said property for any other purpose other than agriculture. In this view of the matter, in our view in order to find out what is the compensation payable in respect of the acquired land, we will only have to assess the compensation on the footing that the property is agricultural and in order to find out what is the compensation payable in respect of the acquired land we will have to see whether any evidence has been led by the applicant in respect of the agricultural income. Mr.

Kakodkar has fairly conceded that there is no cogent evidence led by the appellant in respect of income from agriculture. That being the position, we are unable to accept the submission of Mr. Kakodkar that in order to determine the compensation payable in respect of the acquired land, factors like adjoining development, future potential of the land have to be considered by the Court while determining the compensation. In view of the bar created under S.2 of the Act building potential of the acquired land cannot be considered for determining the compensation. That being the position, all the judgments of the Apex Court on which reliance has been placed by the appellant are inapplicable in the present case. Relying upon Section 3 of the said Act, Shri Kakodkar has submitted that there is an exemption even when the land is vested in a tenant under the Goa, Daman and Diu Agricultural Tenancy Act. We are unable to accept the submission made by Shri Kakodkar. Section 3 only permits the State to use even agricultural tenanted land for any other purpose if the land is acquired for any other purpose. Shri Kakodkar submitted that this Court should consider the evidence led by the applicant, oral as well as documentary, and relying upon the same higher compensation should be awarded. In view of the bar created by S.2 of the Act, we are unable to accept the submission made by the learned counsel for the appellant. We are also unable to accept the submission of Shri Kakodkar that the applicant is entitled to Rs.30/- per sq.m. in respect of the acquired land

on the basis of the concession made by Konkan Railway Corporation before the Land Acquisition Officer since the Land Acquisition Officer made the Award without acting on the said statement made on behalf of Konkan Railway Corporation and the Reference Court has fixed the compensation on the basis of the evidence led by the parties.

9. In view of the above, we do not find any merit in the appeal and the same is therefore dismissed. Having regard to the facts and circumstances of the case, parties are directed to bear their own costs.

A. P. LAVANDE, J.

N. A. BRITTO, J.

sl.